

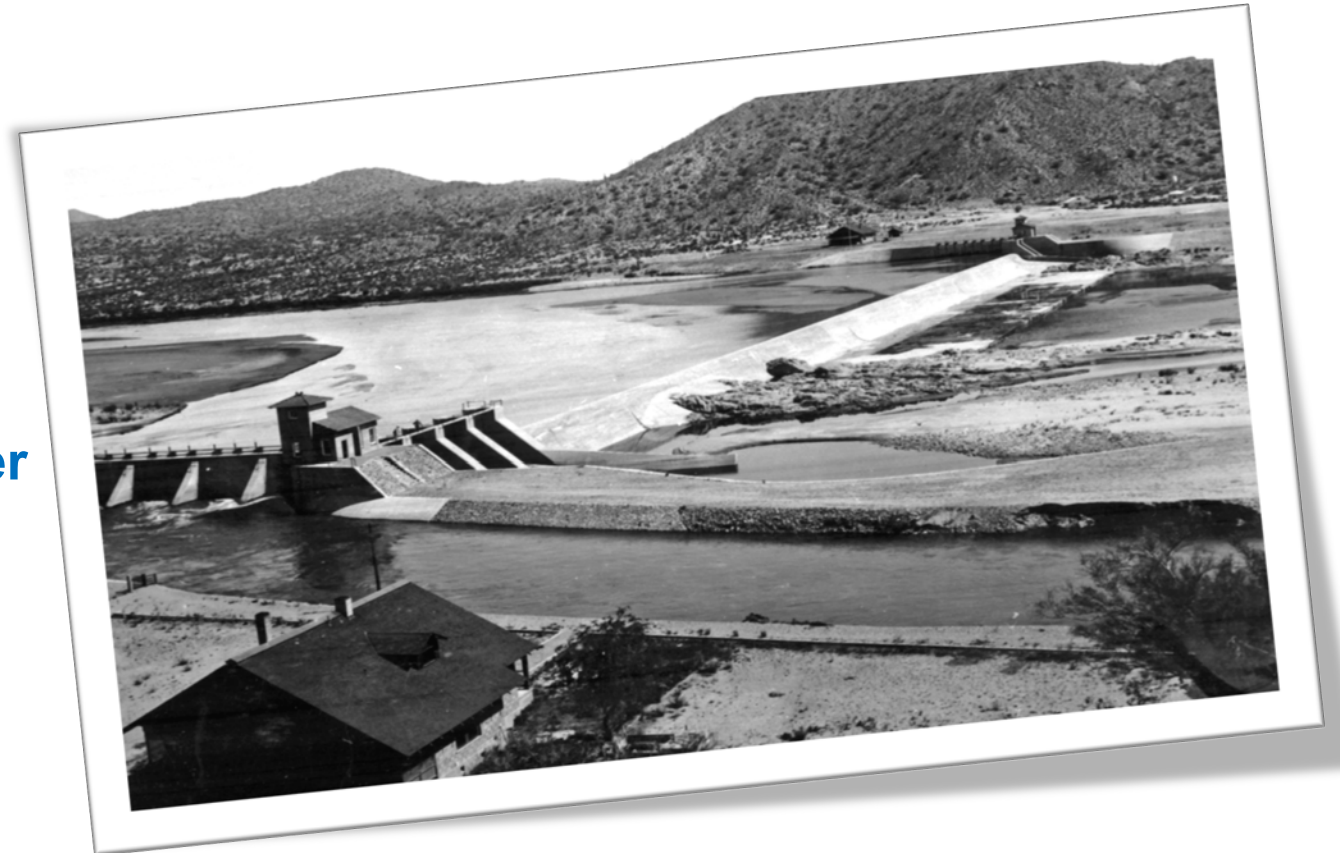
# Cultural Resources Compliance and Transferred Works

**Stakeholders Workshop**

**April 16 and 17, 2019**

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Pacific Northwest Region**



# Introduction

- Aging facilities
- Changing Communities
- Vital Partnerships
- Water Users Concerns
- Development of Directives & Standards



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# Background

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- What are cultural resources and what laws and regulations govern them?
- Why does Reclamation care?
- What is the National Historic Preservation Act (NHPA)?
- What if historic properties are found/what is mitigation?
- Who is the State (or Tribal) Historic Preservation Officer (SHPO/THPO) and what are their roles?
- What is the time table involved in addressing these resources?

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# Cultural Resources

Many things may be considered cultural resources



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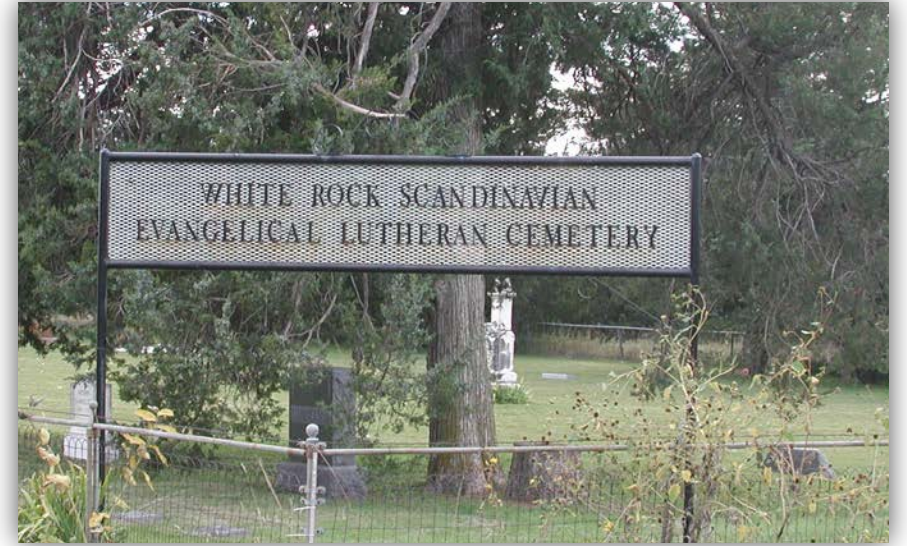


# Native American Sites



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# Cemeteries and Burial Locations



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# Archaeological Sites



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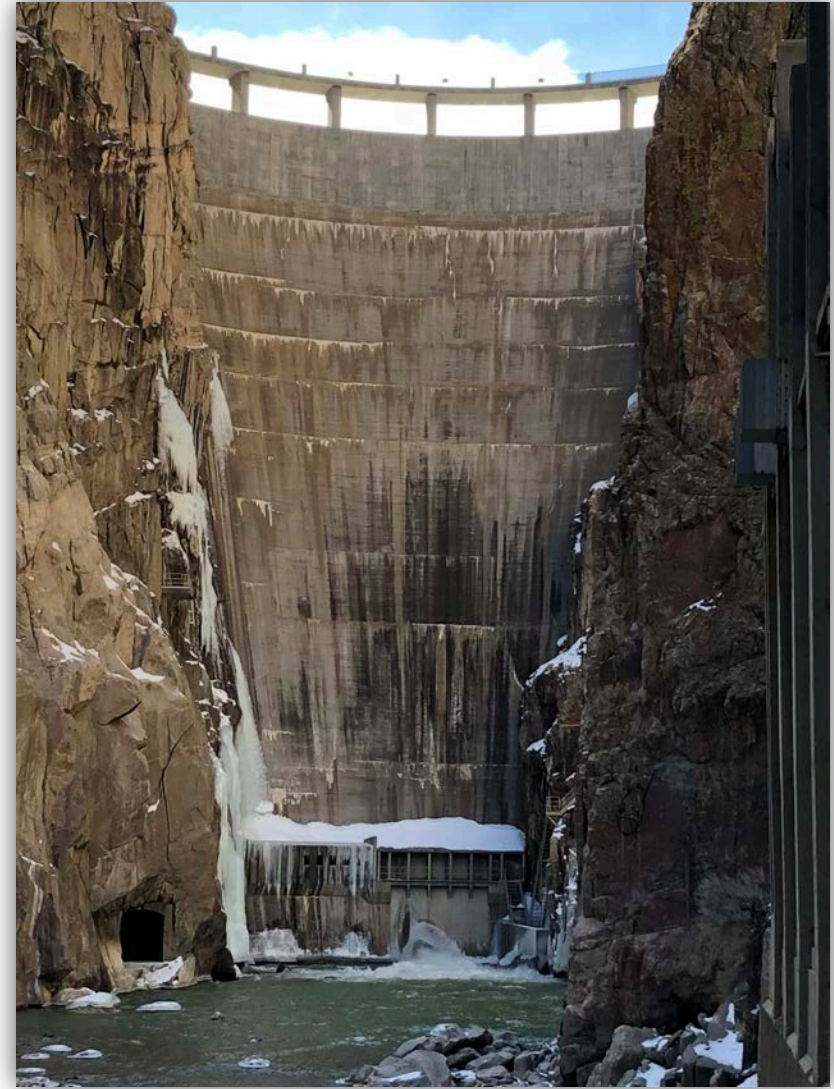
# Buildings



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# Dams



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# Canals and Ditches



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# Places and Objects older than 50 years with historic significance



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# Why does Reclamation care about Cultural Resources?

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- Reclamation has an obligation to care for cultural resources to help western communities tell the story of their collective heritage and tremendous importance to the nation
- They are critically important to Native American Tribes
- Numerous laws require federal agencies consider the affects of their programs on cultural resources
- Other laws provide for stewardship of cultural resources

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# Historic Properties

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- A special category of Cultural Resources
- Historic Properties are cultural resources that have been determined eligible for listing or have been placed on the National Register of Historic Places (NRHP)
- The National Park Service provides guidelines and criterion for individual eligibility determinations

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# Reclamation Has a Number of Historic Properties



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# Reclamation Historic Properties Inspire Art

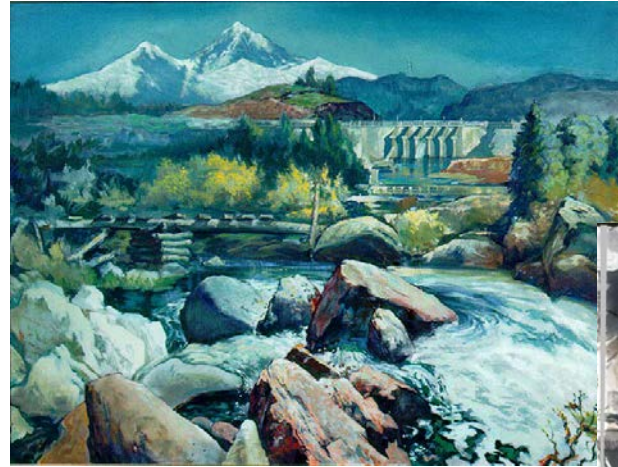
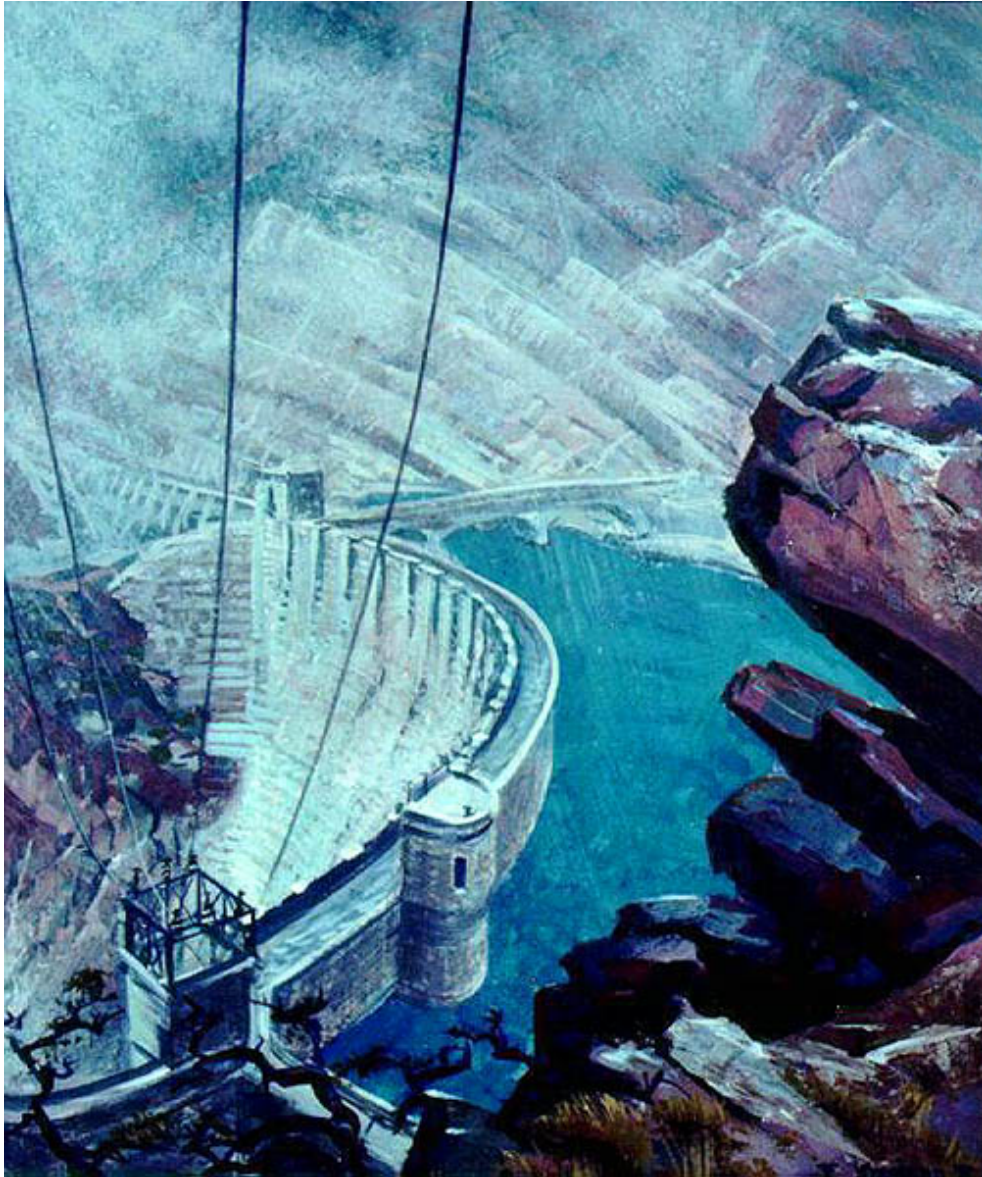


Clyfford Still Grand Coulee Dam 1936 photo from web site  
<https://collection.clyffordstillmuseum.org/listing?keyword=Grand+Coulee>

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# Reclamation Historic Properties Inspire Art



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# National Historic Preservation Act of 1966 (NHPA)

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- One of the most important laws governing cultural resources is NHPA
- Other laws apply, but NHPA can work as a helpful framework to understand a federal agencies' cultural resources obligations

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# Section 106 of NHPA

- Requires federal agencies consider the effects of actions funded, approved, or carried out by that agency on historic properties
- Applies to undertakings



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# Section 110 NHPA

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- Requires federal agencies manage their assets in a way to protect *historic properties* when possible

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# If Historic Properties Are Identified

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- Effects to historic properties must be avoided or mitigated if possible
- Reclamation must afford the Advisory Council on Historic Preservation (ACHP) the opportunity to comment on effects to historic properties

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# Mitigation

- Mitigation is a treatment plan to resolve adverse effects to historic properties
- Mitigation requires an agreement document



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# Mitigation: Dealing with changes to *Historic Properties*

- Who decides?
- What's allowed?



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# What are Transferred Works?

- Transferred works are facilities that are federally-owned for which some or all responsibility for operation, maintenance, and replacement (OM&R) has been transferred to a non-federal entity
- Typically, non-federal entities fund their own OM&R activities “at no expense to the government”



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# Does NHPA apply to Transferred Works

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- Both sections 106 and 110 of NHPA apply
- Reclamation Directives and Standards (LND 02-03) provides procedures for dealing with OM&R of *historic properties* including transferred works
- Transfer agreements alone do not release Reclamation from its responsibilities under NHPA
- Reclamation works with its water operators to ensure effects of OM&R on *historic properties* are considered

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# What is NHPA compliance?

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## Compliance includes

- Determining if an action has potential to adversely affect historic properties
- Inventory resources in a project area (survey)
- Consulting with SHPO's, THPO's and interested parties
- Determining project effects
- Mitigating and documenting mitigation efforts

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# Who can perform NHPA compliance?

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- Operators may do much of the work
- Final decisions are a Reclamation responsibility

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# Who is the SHPO?

- “State Historic Preservation Officer”
- A required official of NHPA
- Usually a governor appointee
- Staff includes various experts



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# What is the SHPO's Role?

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- **Commenting agency**
- **Advise and assist the lead federal agency**
- **A SHPO must be given the opportunity to comment on an undertaking**
- **Relationships often key**

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# Native American Tribes and NHPA

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- **NHPA acknowledges a special role for tribes in the cultural resource management process**
- **Some tribes have assumed the role of the SHPO within reservations and associated trust lands (THPO)**

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# How long compliance takes depends

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- Effects of a project
- Project with no potential to affect historic properties can proceed immediately
- Some projects with little possibility to affect historic properties can be done relatively quickly
- Size of a project and the number of sites being impacted can affect compliance time

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# Overall scale of a project matters

- Multi-faceted or very large scale proposals can take a longer
- Projects involving multiple agencies and parties can increase required time
- Projects that cross state lines can also take longer



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# Other factors affecting compliance timing

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- Weather may delay mitigation efforts
- Ability to access lands (rights of entry)
- Unexpected discoveries
- Human remains encountered
- Change in participants
- Environmental issues could delay mitigation requirements

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# Are there options for streamlining?

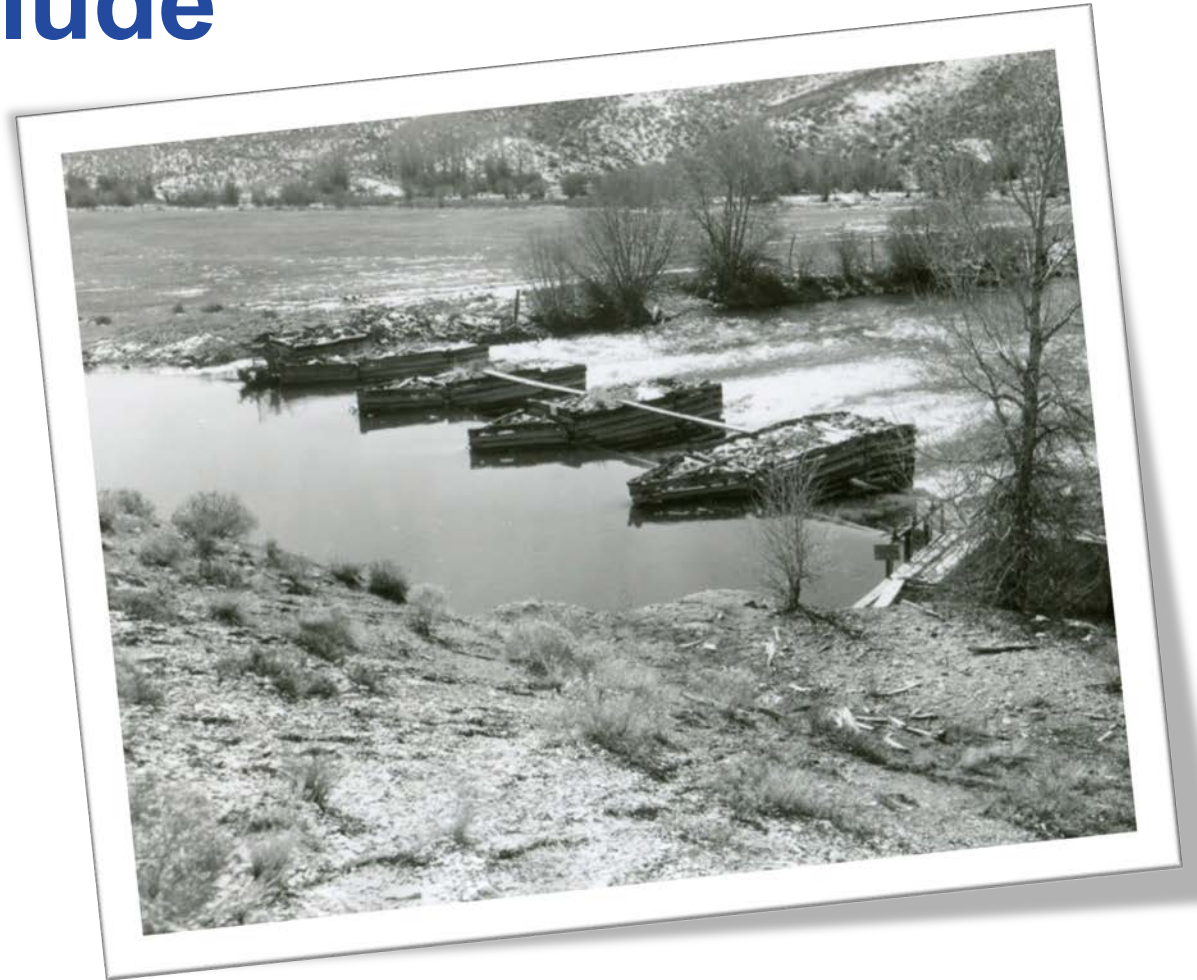
- Alternatives to normal section 106 are available via Advisory Council on Historic Preservation (ACHP)
- Congress can also write exceptions in individual legislation
- Can work in concert with National Environmental Policy Act



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# Alternatives to normal NHPA compliance process via ACHP include

- Programmatic Agreements
- Exemptions
- Program Comments



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# Questions?



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# Breakout for interactive discussions



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# Interactive Discussion Topics

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1. How are your programs positively or negatively affected by cultural resources?
2. Describe your interactions with the SHPO's, THPO, and landowners with respect to cultural resources.
3. What has worked in dealing with challenges concerning cultural resources in your districts?
4. What can Reclamation do to improve or streamline NHPA compliance on transferred works?

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# Return after Breakout Discussions

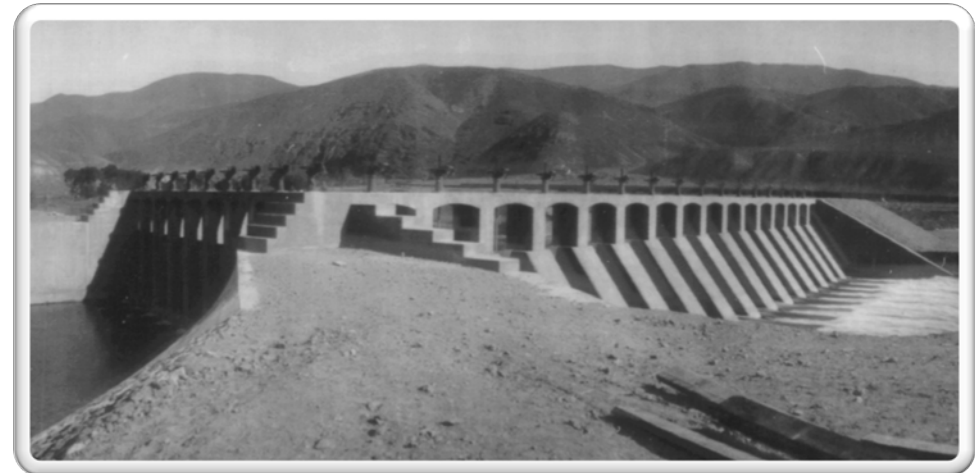


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# Question 1

**How are your programs positively or negatively affected by cultural resources?**



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## Question 2

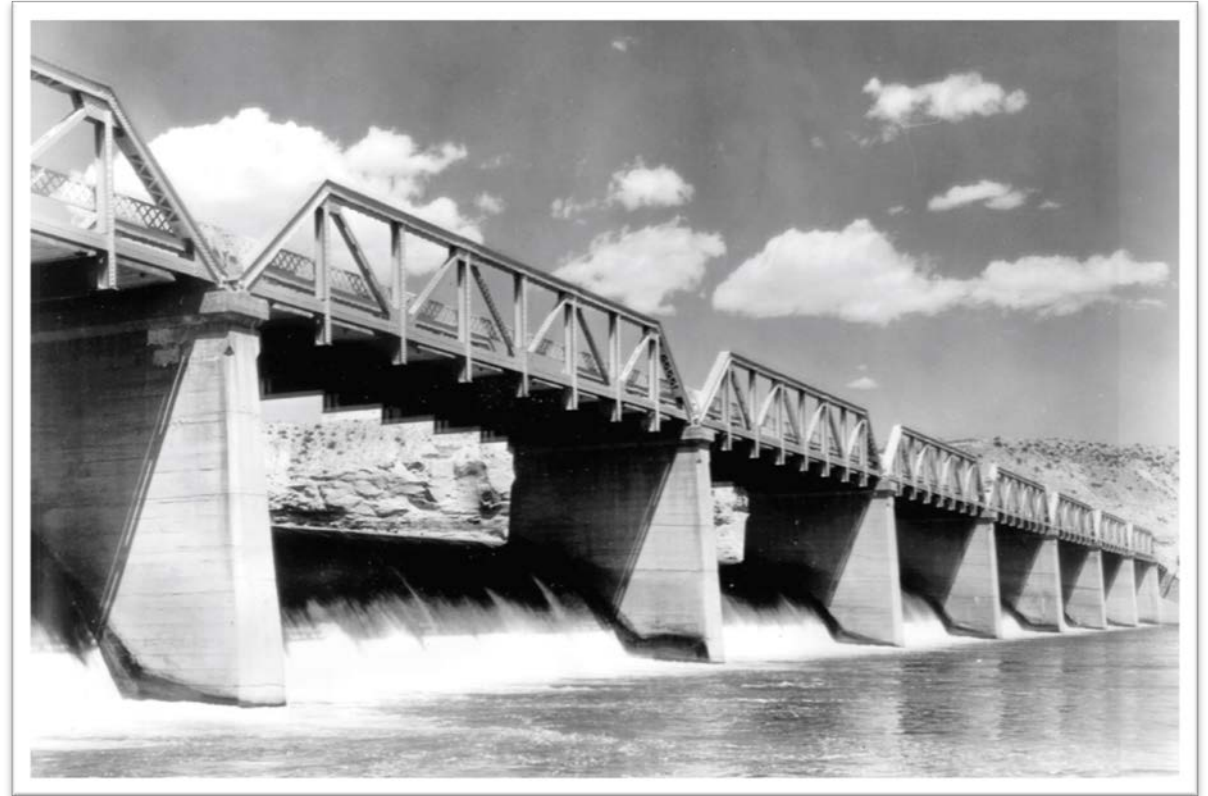
**Describe your interactions with the SHPO's, THPO, and landowners with respect to cultural resources?**



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# Question 3

**What has worked in dealing with challenges concerning cultural resources in your districts?**



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# Question 4

**What can Reclamation do to improve or streamline NHPA compliance on transferred works?**



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# Program Alternatives for Reclamation

- Reclamation is currently working with ACHP on possible program alternatives
- Focusing on water distribution infrastructure
- Could help relieve a portion of the current work load



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# Next Steps

- Continue discussions with ACHP on streamlining
- Work on Directives & Standards through the Reclamation Manual Process
- Continue to solicit feedback from stakeholders and interested parties
- Remain flexible in approaches to NHPA



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# Resources

<https://www.usbr.gov/history/index.html>

<https://www.usbr.gov/cultural/>

<https://collection.clyffordstillmuseum.org/listing?keyword=Grand+Coulee>

<https://www.nps.gov/nr/publications/bulletins/nrb15/>

<https://www.usbr.gov/recman/>

<https://www.achp.gov/>



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*Managing Water in the West*